IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22369 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHBHAI SHRIRAM SAROJ (PASI) - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/01/2006

ORAL JUDGMENT

1. The petitioner original detenu has filed this petition challenging the order dated 11.10.05 passed by the Police Commissioner, Ahmedabad city under provision of the PASA Act. When the matter was

placed for hearing before this Court on 18.11.05, this court has issued Rule and made Rule returnable on 14.12.05 in this behalf. So the respondents are served. Now Mr. Pujari learned APP appears on behalf of respondents and he has also filed affidavit. So with the consent of the parties the matter is taken up for final hearing.

1.1 Mr. Pandya learned advocate who appears on behalf of learned advocate Ms. Mishra has invited my attention to the order dated 11.10.05 passed by Police Commissioner in this behalf. He has also invited my attention in another order dated 11.10.05 sending the petitioner to jail on the same day. The learned advocate has invited my attention to the grounds supplied by the authority to the petitioner also on the same day dated 11.10.05. The learned advocate has after going through the grounds stated that if the grounds are examined the petitioner has committed in all three offences in the jurisdiction of Odhav Police station, Kanbha Police station in Ahmedabad district.

2. Learned advocate further submits all these

offences are committed under provision of Bombay Prohibition Act particulary 65 AE which provides penalty for illegal import, etc of intoxicant or hemp and 66 (1) (b) which provides penalty for illegal cultivoation and collection of hemp particulary one who consumes,uses, possesses or transports any intoxicant or hemp. The offences also alleged under section 81 of the Prohibition Act which provides penalty for attempts or abetment and section 83 which provides penalty for conspiracy .

3. The learned advocate states that in the first offence was registered at Odhav Police station in connection with CR NO. 987/2004 for the offence punishable under section 66 B, 65 E of the Bombay Prohibition Act on 22.4.05 wherein the petitioner is storing 6 bottles of country liquor valued at Rs 450/-.

4. The second offence was registered at Kanbha Police station in connection with CR NO. 171/2005 for the offence punishable under section 66 (1)B, 65 E, 116 (1) (b), 81, 83 of the Bombay Prohibition Act on 6.7.05 wherein the petitioner is storing 60 bottles of

country liquor valued at Rs 19200/-, an autorickshaw valued at Rs 10,000/-, and a mobile phone valued at Rs. 3000/-.

5. The third offence was registered at Odhav Police station in connection with CR NO. 5181/2005 for the offence punishable under section 66 B, 65 A, E, 81, of the Bombay Prohibition Act on 7.10.05 wherein the petitioner is storing 300 lts country liquor and 21 bottles of Indian made foreign liquor valued at Rs 6300/-, 750 lts Indian made foreign liquor valued at Rs 3,400/-, and a mobile phone valued at Rs. 1000/- and in cash Rs 160/-.

6. In the grounds mentioned it has been stated that the petitioner is carrying on business of bootlegging and that will affect the public health. It is also been stated that petitioner is detained under section 2 (b) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act" for convenience).

7. Learned advocate for the petitioner further submitted that there is no material on record to show

that 'public order' has been disturbed at the time of commission of the aforesaid offences or thereafter. Thus, the order of detention was passed without application of mind, and therefore, the same is required to be quashed and set aside.

8. Learned advocate for the petitioner has relied upon the judgement of Hon'ble Apex Court in the case **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491** and Division Bench judgement of this Court in the case of **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393** .

9. 5. The learned counsel for the petitioner submitted that in the recent judgement of the Apex Court in the case of D**istrict Collector, Ananthapur and Anr. Vs. V. Laxmana (2005) 3 Supreme Court cases 663.** (Para 7 of the same is as from)

6. **"**We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then

that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

9. In absence of production of any report of chemical analyser or FSL report the subjective satisfaction of detaining authority that country liquor in which the petitioner is dealing is injurious to public health is contrary to the judgement of Apex Court in the case of V. Laxmana (supra).

10. The learned counsel submitted that in this case the detaining authority has only made a allegation that business of country liquor carried out by the petitioner is dangerous to public health but they have not produced chemical examination report or FSL report.

11. On the other hand Mr. Pujari relied upon the order of detention as well as the affidavit filed by Mr. K. R Kaushik Commissioner of Police the city of Ahmedabad in this behalf the affidavit states that the authority has passed order with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper. It is only stated that the ground of detention it was clearly disclosed that the detenu has indulged in anti social activities which are prejudicial to the maintainance of public order. Therefore there are sufficient materials to arrive at the subjective satisfaction that the detenu is a bootlegger and he is indulging in the activities which are prejudicial to the maintainance of public order. Therefore, after carefully considering all the

relevant materials placed before me, the facts and circumstances of the case as well as the legal provisions applicable to the facts of the case, as was subjectively satisfied that the detenu is a bootlegger as defined under section 2 (b) and antisocial activities have the potential to disturb the public order and therefore it is necessary to detain him immediately with a vire to prevent him from acting in any manner perjudicial to the maintainance of public order ie why the authority has passed the order.

12. I have heard learned counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any cogent or credible material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the decision of the Apex Court in the case of Piyush Kantilal Mehta (Supra) and Division Bench judgement of this Court in the case of Ashok Jivabhai (Supra) and also the judgement of this Court

(coram : K.M.MEHTA, J) in the case of Rajubhai Pratapbhai Panpatil (Supra) Vs. Commissioner of Police dated 15.11.05.

13. I have heard the learned counsel for both parties and I have considered the judgement of the Apex Court in Piyush Kantilal (supra). In view of this decision there is no question of violation of public order there may be violation of law order situation and the matter is covered by the judgement of the Apex Court in Piyush Kantilal and also the Division Bench judgement of Ashok Jivraj (supra) therefore the order of detention is also liable to be quashed and set aside on violation of public order, on the ground that there is no question of violation of public order.

14. Having heard the submissions of the parties and perused the record of the case, I am of the view that only registeration of criminal cases along cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the

PASA Act is not based on simple facts about registeration of crimes or the activities of theft of the detenu. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgement and order dated Piyush Kantilal and Ashok Jivraj supra considered that the activities of the detenu are prejudicial to public health or public order therefore the order of detention dated 11.10.05 passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

15. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgement of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (Supra) and other judgement cited by the petitioner. Considering all these, I am of the view

that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. In my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

16. As regards the additional contention based on the judgement of the Apex Court in V. Laxmana case from the facts of the case the authority has neither relied upon nor supplied in FSL report to show as to whether the country liquor in which the petitioner is dealing is dangerous to public health. In absence of either FSL report or chemical report the allegations made by the detaining authority that activity of the petitioner is injurious to public health and is contrary to and inconsistent with judgement of V. Laxmana case therefore the order of detention is liable to be quashed and set aside on the additional grounds.

17. I have gone through the said judgements and

orders and I am of the view that petition is allowed. The order of detention dated 11.10.05 is quashed and set aside. The detenu, Sureshbhai Shriram Saroj (Pasi) is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost.

(K.M.MEHTA, J)

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